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10/602,553

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1242

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06/12/2007

EXAMINER

TECKLU, ISAAC TUKU

ART UNIT

PAPER NUMBER

2192

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/602,553

Applicant(s)

MAKOWSKI

Examiner

Isaac T. Tecklu

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 82-102 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 82-102 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This action is responsive to the amendment filed on 04/04/2007.
2. Claims 1-81 have been cancelled.
3. New claims 82-102 have been added.
4. Claims 82-102 have been examined.

#### *Claim Rejections - 35 USC § 101*

5. 35 U.S.C. 101 reads as follows:  
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
6. Claims 82-101 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
7. Claim 82 recites “computer-readable medium” defined to include carrier medium such as signals (page 15, lines 17-20). Thus, under the Interim Guidelines such media do not fall within one of the four statutory classes of 35 U.S.C. 101 (See Annex IV). Therefore, the above claims are non-statutory.

A computer-readable media is a tangible physical article or object, some form of matter, which a signal (infrared)/carrier wave is not. That the other two product classes, machine and composition of matter, require physical matter is evidence that a manufacture was also intended to require physical matter. A signal/carrier wave, a form of energy, does not fall within either of the two definitions of manufacture. Thus, a signal/carrier wave does not fall within one of the four statutory classes of Sec. 101. See Annex IV (c) Electro-Magnetic Signals, Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (signed October 26, 2005) – OG Cite: 1300 OG 142. Online version can be retrieved at <http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>

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Under the principles of compact prosecution, claims 41-43 have been examined as the Examiner anticipates the claims will be amended to obviate these 35 USC 101 issues. For example, A computer-readable physical storage medium...-

Claims 83-101 are rejected for failing to cure the deficiencies of the above rejected non-statutory claim 82 above.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 82-102 are rejected under 35 U.S.C. 102(e) as being anticipated by Zink et al. (US 6,738,964 B1), hereinafter “Zink”.

Per claim 82 (New), Zink discloses a computer readable memory medium comprising program instructions, wherein the program instructions are executable by a processor to:

display a function node in a graphical program on a display (e.g. FIG. 13, 1502 and related text), wherein the graphical program comprises a plurality of nodes and connections between the plurality of nodes (col. 12:50-60 “... represent specific group property ...”), wherein the plurality of connected nodes visually indicate functionality of the graphical program (e.g. FIG. 17B and related text), and wherein the function node is executable in the graphical program to perform a first function (e.g. FIG. 6, 602, 603 and related text);

display a function specific property node in the graphical program on the display, wherein the function specific property node is specific to the first function (col. 4:10-25 “... functions like adding ...”), wherein the function specific property node comprises a plurality of properties of the first function (e.g. FIG. 17B and related text); associate the function specific property node with the function node; display the plurality of properties on the display (col. 11:60-68 and e.g. FIG. 6, 602, 603 and related text); and

receive user input selecting one or more of the plurality of properties (e.g. FIG. 8A, 703 and related text); wherein the selected one or more properties are accessible during execution of the graphical program (e.g. FIG. 10A, 1103 and related text).

Per claim 83 (New), Zink discloses the memory medium of claim 82, wherein the property node is statically typed to correspond to the function node (e.g. FIG. 16A-B and related text).

Per claim 84 (New), Zink discloses the memory medium of claim 82, wherein the function specific property node visually indicates the association with the function node (e.g. FIG. 17A and related text).

Per claim 85 (New), Zink discloses the memory medium of claim 82, wherein, during execution of the graphical program, the function specific property node is executable to:

receive input specifying a modification to at least one of the one or more properties (e.g. FIG. 8A, 703 and related text); and

modify the at least one of the one or more properties in response to the input to configure the function node to perform the first function, wherein, after said modifying, the function node is executable in the graphical program to perform the first function in accordance with the modified at least one of the one or more properties (col. 14:10-20 “... modified by insertion ...”).

Per claim 86 (New), Zink discloses the memory medium of claim 82, wherein, prior to said displaying the plurality of properties on the display, the program instructions are further executable to:

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display one or more filtering options for available properties of the function node, wherein the available properties include the plurality of properties (e.g. FIG. 8A and related text); and

receive user input indicating a first filtering option of the one or more filtering options, wherein said displaying the plurality of properties is performed in accordance with the first filtering option (e.g. FIG. 8A, 703 and related text).

Per claim 87 (New), Zink discloses the memory medium of claim 82; wherein, during execution of the graphical program, the program instructions are executable to:

read at least one of the plurality of properties from the function node; and provide the at least one property to a graphical program element comprised in the graphical program (e.g. FIG. 8A, 703 and related text).

Per claim 88 (New), Zink discloses the memory medium of claim 87, wherein the graphical program element comprises a GUI, wherein the GUI is operable to display the at least one property during execution of the graphical program (e.g. FIG. 20B and related text).

Per claim 89 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a timing node, operable to provide timing functionality for the graphical program; and wherein the function specific property node comprises a timing property node (e.g. FIG. 22B and related text).

Per claim 90 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a triggering node, operable to provide triggering functionality for the graphical program; and wherein the function specific property node comprises a triggering property node (e.g. FIG. 20E and related text).

Per claim 91 (New), Zink discloses the memory medium of claim 82,

wherein the function node comprises a read node, operable to provide data acquisition (DAQ) functionality for the graphical program; and wherein the function specific property node comprises a read property node (e.g. FIG. 20D and related text).

Per claim 92 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a write node, operable to provide signal generation functionality for the graphical program; and wherein the function specific property node comprises a write property node (e.g. FIG. 20D and related text).

Per claim 93 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a channel creation node, operable to create a channel for the graphical program (e.g. FIG. 20D and related text); and wherein the function specific property node comprises a channel property node, operable to access channel properties of the created channel (e.g. FIG. 17A and related text).

Per claim 94 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a calibration information data structure that is operable to provide calibration information for a device used by the graphical program; and wherein the function specific property node comprises a calibration information property node (e.g. FIG. 17A and related text).

Per claim 95 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises an export signal data operable to provide export signal data for the graphical program; and structure that is wherein the function specific property node comprises an export signal property node (e.g. FIG. 15 and related text).

Per claim 96 (New), Zink discloses the memory medium of claim 82, wherein the

function node comprises a switch channel specification for the graphical program; and wherein the function specific property node comprises a switch channel property node (e.g. FIG. 17A and related text).

Per claim 97 (New), Zink discloses the memory medium of claim 82, wherein the object comprises a switch scanning task specification for the graphical program; and wherein the function specific property node comprises a switch scan property node (e.g. FIG. 14 A and related text).

Per claim 98 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a scale specification for the graphical program; and wherein the function specific property node comprises a scale property node.

Per claim 99 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a data structure storing software configuration information for a host computer system; and wherein the function specific property node comprises a system property node (e.g. FIG. 14 A and related text).

Per claim 100 (New), Zink discloses the memory medium of claim 82, wherein the function node comprises a data information, including one or more of: a task name; one or more channel names; a number of channels; or structure that stores general task a task status indicator; and wherein the function specific property node comprises a task property node (e.g. FIG. 9 and related text).

Per claim 101 (Original), Zink discloses the memory medium of claim 82, wherein the function node represents a hardware device; and wherein the function specific property node comprises a device property node (e.g. FIG. 9 and related text).

As per claim 102, this is the system version of the claimed medium discussed above (Claim 1), wherein all claim limitations have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Zink.



*Response to Arguments*

10. Applicant's arguments with respect to claims 1-81 have been considered but are moot in view of the new ground(s) of rejection. See Zink art made of record.

*Conclusion*

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac T. Tecklu whose telephone number is (571) 272-7957. The examiner can normally be reached on M-TH 9:300A - 8:00P.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 2192



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